

1 McCormick, Barstow, Sheppard,
2 Wayte & Carruth LLP
3 James P. Wagoner, #58553
jim.wagoner@mccormickbarstow.com
4 Leif E. Knutson, #234203
leif.knutson@mccormickbarstow.com
5 7647 North Fresno Street
Fresno, California 93720
6 Telephone: (559) 433-1300
Facsimile: (559) 433-2300
7
8 Attorneys for Plaintiffs FreshPac, LLC; Dayka &
Hackett, LLC; Kool Kountry, LLC; Hackett Ag
Management, Inc.; Fresh Select, LLC; and TM
Diversified Management, Inc. on behalf of Dayka
Ag Management, Inc.

9
10 UNITED STATES DISTRICT COURT
11
12 EASTERN DISTRICT OF CALIFORNIA, FRESNO DIVISION

13 FRESHPAC, LLC; DAYKA & HACKETT,
14 LLC; KOOL KOUNTRY, LLC; HACKETT
15 AG MANAGEMENT, INC.; FRESH
SELECT, LLC; and TM DIVERSIFIED
MANAGEMENT, INC. on behalf of DAYKA
AG MANAGEMENT, INC.,

Case No. 1:23-cv-00678-JLT-BAM

**JOINT STIPULATION TO MODIFY
BRIEFING SCHEDULE FOR MOTION
TO DISMISS COMPLAINT (FRCP
12(b)(3) AND [PROPOSED] ORDER**

16 Plaintiffs,

17 v.

18 AMRITSAR INSURANCE COMPANY; and
19 Does 1-100.,

Defendant.

21
22 Plaintiffs FRESHPAC, LLC; DAYKA & HACKETT, LLC; KOOL KOUNTRY, LLC;
23 HACKETT AG MANAGEMENT, INC.; FRESH SELECT, LLC; and TM DIVERSIFIED
24 MANAGEMENT, INC. on behalf of DAYKA AG MANAGEMENT, INC., and Defendant
25 AMRITSAR INSURANCE COMPANY, by and through their counsel of record, hereby stipulate
26 as follows:

27 / / /

28 / / /

JOINT STIPULATION TO MODIFY BRIEFING SCHEDULE FOR MOTION TO DISMISS COMPLAINT (FRCP
12(b)(3) AND PROPOSED ORDER

1 1. On July 21, 2023, Defendant filed the pending “Motion to Dismiss for Lack of
2 Jurisdiction Pursuant to FRCP 12(b)(3), or, in the Alternative to Enforce a Contractual Forum
3 Selection Provision and Change Venue Based on Forum Non Conveniens Pursuant to 28 U.S.C.
4 §1404(b).” (See Docket No. 11 [hereinafter “Motion to Dismiss”].) Based on the Motion to
5 Dismiss’ filing date, the deadline for Plaintiffs to file an Opposition to the Motion to Dismiss was
6 August 4, 2023. (See E.D.Cal. Local Rule 230(c).)

7 2. As set forth and explained by the accompanying Declaration of Marisela Taylor,
8 counsel for Plaintiffs drafted and prepared an Opposition to the Motion to Dismiss which was
9 complete and ready for filing by the August 4, 2023 deadline. (See Taylor Decl., ¶¶5-7.) However,
10 due to clerical error and inadvertence, the Opposition was not filed until 3:33 a.m. on August 5,
11 2023, thereby missing the August 4, 2023 filing deadline by approximately 3.5 hours. (*Id.*, ¶¶8-10;
12 Docket no. 14; *see also* E.D.Cal. Local Rule 134(b) [generally requiring electronic filing of
13 document “before midnight (Pacific Time) on that business day”].)

14 3. Thereafter, on August 7, 2023 counsel for the parties telephonically conferred
15 regarding the inadvertent late filing of the Opposition and determined that: (1) Defendant would not
16 object to the inadvertent late filing of the Opposition; and (2) the parties would file a Joint
17 Stipulation with the Court for an order to accommodate the Plaintiffs’ inadvertent late filing of the
18 Opposition.

19 4. Based on information and belief, the inadvertent late filing of the Opposition should
20 cause no inconvenience to the Court since the Court has vacated the previously noticed Motion to
21 Dismiss hearing date of August 28, 2023 and announced its intention to resolve the Motion to
22 Dismiss “on the papers.” (See Docket no. 13 [July 26, 2023 Minute Order].)

23 5. Therefore, Plaintiffs and Defendant by and through their respective counsel hereby
24 stipulate that the Plaintiffs’ Opposition to the Motion to Dismiss be deemed to have been timely filed
25 and respectfully request that this Court enter an Order to that effect.

26 ///

27 ///

28 ///

1 Dated: August 7, 2023

ADAMSKI MOROSKI MADDEN
CUMBERLAND & GREEN LLP



JEFFREY A. HACKER
Attorneys for Defendant AMRITSAR
INSURANCE COMPANY

6
7 Dated: August 7, 2023

McCORMICK, BARSTOW, SHEPPARD,
WAYTE & CARRUTH LLP



8
9
10 JAMES P. WAGONER
11 LEJF E. KNUTSON
12 Attorneys for Plaintiffs FRESHPAC, LLC;
13 DAYKA & HACKETT, LLC; KOOL KOUNTRY,
14 LLC; HACKETT AG MANAGEMENT, INC.;
FRESH SELECT, LLC; AND TM DIVERSIFIED
MANAGEMENT, INC. ON BEHALF OF
DAYKA AG MANAGEMENT, INC.

15

16

17

ORDER

18 Having considered the Parties' "Joint Stipulation To Modify Briefing Schedule For Motion
19 To Dismiss Complaint (FRCP 12(b)(3)" the Court determines that there is good cause to excuse the
20 Plaintiffs' inadvertent late filing of their Opposition to Defendants' Motion to Dismiss. Therefore,
21 the Opposition will be deemed to have been timely filed under the applicable Local Rules.
22

23

IT IS SO ORDERED.

24

Dated: August 9, 2023



JENNIFER L. THURSTON
UNITED STATES DISTRICT JUDGE

25

26

27

28